

# Vote No SB 220 – Part of the DOR Expansion Plan

## THIS BILL IS NOT NECESSARY

The DOR already has the tools to ensure that taxpayers are complying with Montana law. Tax compliance changes implemented over the last 2 years include:

- o 2005 legislature appropriated an additional \$2.4 million to DOR to help improve tax compliance
- o Federal law requires taxpayers to file "potential tax abuse transactions" - DOR currently requires copies of these forms included with the Montana income tax return
- o DOR now requires SSN or EIN information for all parties in a real-estate transaction for the purpose of cross-referencing forms
- o Two bills have passed the Senate that would reinstate a program requested by the Department that will require 1099S reporting from title companies
- o DOR has legislation to allow them to enter into contracts with other states and the IRS to assist with out-of-state collections
- o According to the fiscal note, simply contacting delinquent taxpayers has increased compliance

## INCREASES BUREAUCRACY

DOR is asking for a huge increase in their scope, budget, and personnel in a package of "tax cheat" bills that includes SB 220. Overall, DOR requested:

- o \$34.5 million increase in budget – a 53% increase (\$657k included in SB 220)
- o 102.5 new FTE – a 17% increase (5 FTE included in SB 220)
- o 56 new sections to the tax code and nearly 100 changes to existing law (23 new sections in SB 220)

## INCREASES POWER OF THE DIRECTOR

SB 220 adds a new section on "reportable transactions" that gives broad authority to the Director to define whether a transaction is a legitimate tax shelter. The ambiguity inherent throughout the bill makes it virtually impossible for a taxpayer or tax advisor to know what is legal. The department says it will rely heavily on rule-making authority; however, these issues should be defined by the legislature, not by department rule. **Under SB 220, the Director becomes the prosecutor, judge, and jury without adequate oversight.** (See definitions for "reportable transaction" and "listed transaction", Page 2, Lines 17-20 and Lines 27-30, and Section 7).

## INCREASES COMPLEXITY & CONFUSION

**SB 220 affects all taxpayers.** There is nothing in this bill that refers only to out-of-state corporations or residents. The effect will be a more onerous tax-compliance burden on all Montanans. This bill will create confusion for individual and tax professionals through its heightened level of complexity, and it imposes penalties for failure to report certain transactions before it is determined if those transactions are illegal.

**SB 220 imposes new reporting requirements that will create more confusion in our tax system.** It requires withholding on non-resident sales that *might* have a capital gain. The fiscal note incorrectly assumes that none of the sales it references are owner-occupied primary residences or 1031 exchanges (cases where capital gains taxes would not be owed). **DOR has overstated the potential revenue generated and it overstates the amount of non-compliance that currently exists for non-resident sales.** A recent study by the Montana Title Association reviewed over 8,600 real estate transactions. The results show that only 1.7% of all transactions *might* potentially be subject to the withholding provisions in this bill. **Should Montana enact such a major change to tax policy to address a potential tax liability for 1.7% of real estate transactions when they already have tools in place to identify them? Should over 98% of the sellers and buyers in Montana pay the additional costs to re-tool and administer this radical change?**

**SB 220 attempts to draw correlations where there are none.** In regard to tax amnesty, SB 220's fiscal note compares Montana with California, New York, North Carolina, and Illinois. The smallest of these states, North Carolina, has a population 9.4 times greater than Montana's; however, it collects 11.8 times more income tax. The claim that Montana will collect \$5.1 million in FY08 is not supported by the demographic disparities between Montana and these states. (See Fiscal Note, Page 2)

### **RETROACTIVE**

SB 220 is retroactive. This means that the individuals and businesses will have to produce records for the past seven years. Can't find them? \$10,000 fine for individuals; \$50,000 for businesses (Page 4, Lines 25-26).

### **TOKEN TAX RELIEF IN A TAX COMPLIANCE BILL**

SB 220 claims property tax relief where there is little. While SB 220 exempts the first \$80,000 of market value of equipment, there is no reimbursement mechanism included in the bill. A reimbursement mechanism was introduced late and missed transmittal. No reimbursement will cause a shift in property taxes to homeowners.

### **TEST-TUBE TAX POLICY**

The bill would require businesses operating in more than one state to complete a 51 state spreadsheet and allow the director to define economic substance for purposes of determining your tax liability. These and other provisions in SB 220 **have not been tried in ANY OTHER state**. The DOR is attempting to make Montana a "test tube" for untried tax theories. We shouldn't be treating our taxpayers like lab rats. The ambiguity and differentiations from other states will make Montana less attractive than our surrounding states to potential investors. **SB 220 works against increasing capital investment in Montana.**

#### **Montanans Opposed to SB220**

Montana Society of CPAs  
Montana Taxpayers Association  
Montana Chamber of Commerce  
Montana Farm Bureau  
Montana Stockgrowers Association  
Montana Association of REALTORS  
Montana Bankers Association  
Northwest Montana Association of REALTORS  
Billings Association of REALTORS  
National Federation of Independent Businesses (NFIB)  
Greater Montana Independent Electrical Contractors  
Montana Petroleum Marketers & C-Store Association  
Montana Grain Growers Association  
Montana Retail Association  
Montana Restaurant Association  
Montana Equipment Dealers  
Associated Plumbing and Heating Contractors Association  
Montana Association of Oil, Gas and Coal Counties

Kalispell Chamber of Commerce  
Bozeman Chamber of Commerce  
Helena Chamber of Commerce  
Great Falls Chamber of Commerce  
Billings Chamber of Commerce  
Montana Automobile Dealers  
Montana Builders Association  
Montana Petroleum Association  
Montana Land Title Association  
Montana Coal Council  
Montana Contractors Association  
Montana Motor Carriers Association  
Montana Subcontractors Association  
Montana Logging Association  
Montana Wood Products Association  
Montana Beer and Wine Wholesalers Association  
Montana Tire Dealers Association

Council on State Taxation (COST)  
Motion Picture Association of America

Federation of Exchange Accommodators  
American Council of Life Insurers

***Contact your legislator today and tell them to vote NO on SB220.***